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J.S. McCarthy Company
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See title page for effective date.

CHAPTER 669

H.P. 1313 - L.D. 1797

An Act to Implement the Recommendations of the Task Force on Tax Increment Financing

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA §5252, sub-§8, as amended by PL 1991, c. 431, §§4 and 5, is further amended to read:

8. Project costs. "Project costs" means any expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred ~~by the municipality which~~ that are ~~listed~~ included in a ~~project plan~~ development program as costs of improvements, including public works, acquisition, construction or rehabilitation of land or improvements for sale or lease to, or use by, commercial or industrial users, within a development district plus any costs incidental to those improvements, reduced by any income, special assessments or other revenues, other than tax increments, received or reasonably expected to be received by the municipality in connection with the implementation of this plan.

A. The term "project costs" does not include the cost of buildings, or portions of buildings, used predominantly for the general conduct of government. These buildings include, but are not limited to, city halls and other headquarters of government where the governing body meets regularly, courthouses, jails, police stations and other State Government and local government office buildings.

B. The term "project costs" includes, but is not limited to:

(1) Capital costs, including, but not limited to:

(a) The actual costs of the construction of public works or other improvements, ~~new~~ buildings, structures and fixtures;

(b) The demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures;

(c) The acquisition of equipment; ~~and~~

(d) ~~The clearing and grading of land~~ Site preparation and finishing work; and

(e) All fees and expenses that are eligible to be included in the capital cost of such improvements, including, but not limited to, licensing and permitting expense, planning, engineering, architectural, testing, legal and accounting expenses.

(2) Financing costs, including, but not limited to, ~~all~~ closing costs, issuance costs, and interest paid to holders of evidences of indebtedness issued to pay for project costs and any premium paid over the principal amount of that indebtedness because of the redemption of the obligations before maturity;

(3) Real property assembly costs~~, meaning any deficit incurred resulting from the sale or lease as lessor by the municipality of real or personal property within a development district for consideration which is less than its cost to the municipality~~;

(4) Professional service costs, including, but not limited to, those costs incurred for architectural, planning, engineering and legal advice and services;

(5) Administrative costs, including, but not limited to, reasonable charges for the time spent by municipal employees in connection with the implementation of a ~~project plan~~ development program;

(6) Relocation costs, including, but not limited to, those relocation payments made following condemnation;

(7) Organizational costs, including, but not limited to, the costs of conducting environmental impact and other studies and the costs of informing the public about the

creation of development districts and the implementation of project plans;

~~(8) Payments made, in the discretion of the local legislative body, which are found to be necessary or convenient to the creation of development districts or the implementation of project plans;~~

(9) That portion of the costs reasonably related to the construction ~~or,~~ alteration or expansion of ~~sewerage~~ any facilities not located within the district that are required due to improvements or activities within the district including, but not limited to, sewage treatment plants, water treatment plants or other environmental protection devices, storm or sanitary sewer lines, water lines or amenities on streets or ~~the rebuilding or expansion of which is required by the project plan for a development district, whether or not the construction, alteration, rebuilding or expansion is within the development district~~ fire stations;

(10) Training costs, including, but not limited to, those costs associated with providing skills development and training for employees of businesses within the development district. These costs may not exceed 20% of the total project costs and must be designated as training funds ~~within 3 years of the designation of the district~~ in the development program; and

(11) ~~Improvements, meaning costs~~ Costs associated with developing new employment opportunities; promoting public events; advertising cultural, educational and commercial activities; providing public safety; establishing and maintaining administrative and management support; assisting in mitigating any adverse impact of a district upon the municipality and its constituents; funding economic development programs or environmental improvement programs developed by the municipality; and such other services as are necessary or appropriate to carry out the development program if the activities and programs generating such costs are provided for in the development program and bear a reasonable relationship to the improvements or activities within the district or the impacts on the district.

Sec. 2. 30-A MRSA §5253, sub-§1, ¶¶C to E, as repealed and replaced by PL 1991, c. 431, §6, are amended to read:

C. The aggregate value of equalized taxable property, as defined in Title 36, sections 208 and 305, of a tax increment financing district determined as of the April 1st preceding the date the designation of the district becomes effective, plus all existing tax increment financing districts determined as of the April 1st preceding the date the designation of each such district became effective, may not exceed 5% of the total value of equalized taxable property within the municipality as of the April 1st preceding the date the designation of the development district becomes effective. However, excluded from the calculation of this limit is any district involving project costs in excess of $10,000,000, the geographic area of which consists entirely of contiguous property owned by a single taxpayer and the assessed value of which exceeds 10% of the municipality's total assessed value. For the purpose of this paragraph, "contiguous property" includes a parcel or parcels of land divided by a road, power line or right-of-way.

D. The aggregate value of municipal general obligation indebtedness financed by the proceeds from tax increment financing districts within any county may not exceed $50,000,000, adjusted by a factor equal to the percentage change in the United States Bureau of Labor Statistics Consumer Price Index, United States City Average, from January 1, 1996 to the date of calculation.

E. The designation of captured assessed value of property within a tax increment financing district is subject to the following limitations.

(1) The Commissioner of Economic and Community Development shall adopt rules necessary to allocate or apportion the designation of captured assessed value of property within tax increment financing districts in accordance with these limitations.

(2) The acquisition, construction and installment of all real and personal property improvements, buildings, structures, fixtures and equipment within the district contemplated by the development program must be completed within 5 years of the designation of the tax increment financing district by the Commissioner of Economic and Community Development.

Sec. 3. 30-A MRSA §5254, sub-§5 is enacted to read:

5. Considerations for approval. Prior to designating a development district within the boundaries of a municipality, or prior to establishing a

development program for a designated development district, the legislative body of a municipality must consider whether the proposed district or program will make a contribution to the economic growth or well-being of the municipality or to the betterment of the health, welfare or safety of the inhabitants of the municipality. Interested parties must be given a reasonable opportunity to present testimony concerning the proposed district or program at the hearing provided for in section 5253, subsection 1 or 2. If an interested party claims at the public hearing that the proposed district or program will result in a substantial detriment to that party's existing business in the municipality and produces substantial evidence to that effect, the legislative body must consider such evidence. When considering that evidence, the legislative body also shall consider whether any adverse economic effect of the proposed district or plan on that interested party's existing business in the municipality is outweighed by the contribution made by the district or plan to the economic growth or well-being of the municipality or to the betterment of the health, welfare or safety of the inhabitants of the municipality.

Sec. 4. 30-A MRSA §5254-A, sub-§7, as amended by PL 1993, c. 741, §3, is further amended to read:

7. Repeal of state tax increment financing districts. The designation of new state tax increment financing districts ceases June 30, 1996, subject to review by the joint standing committees of the Legislature having jurisdiction over economic development and taxation matters. Designation of new state tax increment financing districts may only be resumed by act of the Legislature. This subsection does not apply to any proposed state tax increment financing district for which a completed application has been submitted to the Commissioner of Economic and Community Development on or before June 30, 1996.

Sec. 5. 36 MRSA c. 917 is enacted to read:

CHAPTER 917

EMPLOYMENT TAX INCREMENT FINANCING

§6751. Short title

This chapter may be known and cited as the "Maine Employment Tax Increment Financing Act."

§6752. Program established; declaration of public purpose

The Maine Employment Tax Increment Financing Program is established to encourage the creation of net new quality jobs in this State, improve and broaden the tax base and improve the general economy of the State. The Legislature declares that the actions required to assist the implementation of development programs are a public purpose and that the execution and financing of these programs are a public purpose.

§6753. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Affiliated businesses. "Affiliated businesses" means 2 businesses exhibiting either of the following relationships:

A. One business owns 50% or more of the stock of the other business or owns a controlling interest in the other; or

B. Fifty percent or more of the stock or a controlling interest is directly or indirectly owned or acquired by a common owner or owners following approval by the commissioner, whether by acquisition of substantially all of the assets, 50% or more of the stock or through a merger, consolidation or reorganization.

2. Affiliated group. "Affiliated group" means a qualified business and its corresponding affiliated businesses.

3. Applicant. "Applicant" means a qualified business that has submitted an application to the commissioner for approval of an employment tax increment financing development program.

4. Base level of employment. "Base level of employment" means the greater of either the total employment of a business as of the December 31st immediately preceding the approval of the employment tax increment financing development program or its average employment during the base period.

5. Base period. "Base period" means the 3 calendar years prior to the year in which an applicant's employment tax increment financing development program is approved by the commissioner.

6. Commissioner. "Commissioner" means the Commissioner of Economic and Community Development.

7. Employment tax increment. "Employment tax increment" means that level of employment, payroll and state income withholding taxes attributed to qualified employees employed by a qualified business above the base level for the qualified business, adjusted pursuant to section 6757 for shifts in employment by affiliated businesses.

8. Employment tax increment financing development program. "Employment tax increment financing development program" means a statement describing:

A. An applicant's employment growth and capital investment plans over the 5-year period beginning on the date an application is submitted to the commissioner; and

B. A description of how funds reimbursed under this Act are necessary to the achievement of those plans.

9. Gross employment tax increment. "Gross employment tax increment" means that level of employment, payroll and State income tax withholding taxes attributed to qualified employees employed by a qualified business that is greater than the base level for the qualified business.

10. Labor market unemployment rate. "Labor market unemployment rate" means the unemployment rate as published by the Department of Labor for the labor market or markets in which potential qualified employees are located and in which reimbursement is claimed under this chapter for the calendar year for which reimbursement is claimed.

11. Qualified business. "Qualified business" means any for-profit business in this State, other than a public utility as defined by Title 35-A, section 102, that adds 15 or more qualified employees above its base level of employment in this State within any 2-year period commencing on or after January 1, 1996 and that meets one of the following criteria:

A. The business is not engaged in retail operations;

B. The business is engaged in retail operations but less than 50% of its total annual revenues from Maine-based operations are derived from sales taxable in this State; or

C. The business is engaged in retail operations and can demonstrate to the commissioner by a preponderance of the evidence that any increased sales will not include sales tax revenues derived from a transferring or shifting of retail sales from other businesses in this State.

For purposes of this subsection, "retail operations" means sales of consumer goods for household use to consumers who personally visit the business location to purchase the goods.

12. Qualified employees. "Qualified employees" means new, full-time employees hired in this State by a qualified business and for whom a retirement program subject to the Employee Retirement Income Security Act of 1974, 29 United States Code, Sections 101 to 1461, as amended, and group health insurance are provided, and whose income, calculated on a calendar year basis is greater than the average annual per capita income in the labor market area in which the qualified employee is employed and whose state income withholding taxes are subject to reimbursement to the qualified business under this chapter. "Qualified employees" must be residents of this State.

13. State unemployment rate. "State unemployment rate" means the unemployment rate as published by the Department of Labor for the State as a whole, for the calendar year for which reimbursement is claimed.

§6754. Reimbursement allowed

1. Generally. Subject to the provisions of subsection 2, a qualified business is entitled to reimbursement of state income withholding taxes withheld during the calendar year for which reimbursement is requested and attributed to qualified employees after July 1, 1996 in the following amounts.

A. For qualified employees employed by a qualified business in state labor market areas in which the labor market unemployment rate is at or below the state unemployment rate for the calendar year for which reimbursement is requested, the reimbursement is equal to 30% of withholding taxes withheld during that year and attributed to those qualified employees.

B. For qualified employees employed by a qualified business in state labor market areas in which the labor market unemployment rate is greater than the state unemployment rate for the calendar year for which reimbursement is requested, the reimbursement is equal to 50% of withholding taxes withheld during that year and attributed to those qualified employees.

2. Limitations. Reimbursement to a qualified business under this chapter is subject to the following limitations.

A. A business previously qualified and approved by the commissioner may not receive reimbursement under this chapter for any period of time in which it failed to maintain the minimum requirements for initial approval as a qualified business.

B. Reimbursement to a qualified business approved pursuant to this chapter expires 10 years after the date the employment tax increment financing development program was approved.

C. A business electing to take the jobs and investment tax credit under section 5215 may not claim reimbursement under this chapter until the full amount of allowable jobs and investment tax credit benefits have been claimed.

D. A business may not claim reimbursement under this chapter for income withholding taxes attributed to employees employed within any state tax increment financing district approved under Title 30-A, chapter 207.

E. Employee payroll withholding amounts are limited to the standard amount required to be withheld pursuant to chapter 827 and may not include any excess withholding.

F. The aggregate annual retained employment tax increment revenues for all employment tax increment financing programs may not exceed $20,000,000, adjusted by a factor equal to the percentage change in the United States Bureau of Labor Statistics Consumer Price Index, United States City Average, from January 1, 1996 to the date of calculation.

3. Multiple labor market areas. The commissioner may by rule establish procedures for equitably apportioning reimbursement to a qualified business employing qualified employees in multiple labor market areas in the State.

§6755. Procedures for application

A qualified business that applies to the commissioner for approval of its employment tax increment financing program shall submit, in a form acceptable to the commissioner, the following information:

1. Base level data. Employment, payroll and state withholding data necessary to calculate the base level;

2. Number of qualified employees. The number of qualified employees that the applicant has added or will add in the State that qualify the business for reimbursement under this chapter, including additional associated payroll and withholding data necessary to calculate the gross employment tax increment and establish the appropriate reimbursement percentage;

3. Certification. Certification that a retirement program subject to the Employee Retirement Income Security Act of 1974, 29 United States Code, Sections 1001 to 1461 and group health insurance have been made available to all of the applicant's qualified employees;

4. Employment locations. A listing of all of the applicant's employment locations within the State and the number of employees at each location; and

5. Affiliations and data. A listing of all affiliated business and affiliated groups, data regarding current employment, payroll and state income withholding taxes for each affiliated business in the State.

Upon receipt of the information required by this section, the commissioner shall review the information in a timely fashion. If the commissioner determines that the criteria provided in section 6756 are satisfied, the commissioner must issue a certificate of approval to the applicant.

§6756. Criteria for approval

Prior to issuing a certificate of approval for an employment tax increment financing program, the commissioner must find that:

1. Approval needed. The economic development described in the program will not go forward without the approval;

2. Contribution to State. The program will make a contribution to the economic well-being of the State; and

3. No substantial harm to existing businesses. The economic development described in the program will not result in a substantial detriment to existing businesses in the State. In order to make this determination, the commissioner shall consider, pursuant to Title 5, chapter 375, subchapter II, those factors the commissioner determines necessary to measure and evaluate the effect of the proposed program on existing businesses, including whether any adverse economic effect of the proposed program on existing businesses is outweighed by the contribution described in subsection 2.

The State Economist shall review applications for employment tax increment financing and provide an advisory opinion to assist the commissioner in making findings under this section.

§6757. Calculation of employment tax increment

The State Tax Assessor shall calculate the employment tax increment for a particular program by removing from the gross employment tax increment the revenues attributed to business activity shifted from affiliated businesses to the applicant. This adjustment is calculated by comparing the current year's income withholding tax revenues for the applicant business that is a member of an affiliated group with revenues for the group as a whole. If the growth in income withholding tax revenue for the

entire group exceeds the growth of income withholding tax revenue generated by the applicant, the gross employment tax increment does not have to be adjusted to remove business activity shifted from affiliated businesses. If the growth in income withholding tax revenue for the affiliated group is less than the growth in income withholding tax revenue for the applicant, the difference is presumed to have been shifted from affiliated businesses to the applicant and the gross employment tax increment for the applicant business is reduced by the difference. The State Tax Assessor shall adjust the calculation by subtracting from the gross employment tax increment a figure obtained by multiplying the previous year's total amount of income taxes withheld by a qualified business by the percentage change in withholding taxes for all business within the State as a whole; however, an adjustment may not be made if the percentage change is 0 or less.

§6758. Procedure for reimbursement

1. Reporting by qualified businesses. On or before April 15th of each year, each qualified business approved by the commissioner pursuant to this chapter shall report the number of employees, the state income taxes withheld for the immediately preceding calendar year and any further information the State Tax Assessor may reasonably require.

2. Determination by State Tax Assessor. On or before June 30th of each year, the State Tax Assessor shall determine the employment tax increment of each qualified business for the preceding calendar year. A qualified business may receive up to 50% of the employment tax increment generated by that business as determined by the State Tax Assessor, subject to the further limitations in section 6753, subsection 2. That amount is referred to as "retained employment tax increment revenues."

3. Deposit and payment of revenue. On or before June 30th of each year, the Commissioner of Administrative and Financial Services shall deposit an amount equal to the total retained employment tax increment revenues for the preceding calendar year for approved employment tax increment financing programs in the state employment tax increment contingent account established, maintained and administered by the Commissioner of Administrative and Financial Services. On or before July 31st of each year, the Commissioner of Administrative and Financial Services shall pay to each approved qualified business an amount equal to the retained employment tax increment revenues for the preceding calendar year.

§6759. Program administration

The commissioner shall administer this Act. The commissioner and the State Tax Assessor may adopt rules pursuant to the Maine Administrative Procedure Act for implementation of the program, including, but not limited to, rules for determining and certifying eligibility. The commissioner may also by rule establish fees, including fees payable to the State Tax Assessor and the State Planning Office for obligations under this chapter. Any fees collected pursuant to this chapter must be deposited into a special revenue account administered by the State Tax Assessor and those fees may be used only to defray the actual costs of administering this Act.

§6760. Confidentiality

The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

1. Records used for designation or approval of program. Any record obtained or developed by the commissioner or the State Tax Assessor for designation or approval of an employment tax increment financing program. After receipt by the commissioner or the State Tax Assessor of the application or proposal, a record pertaining to the application or proposal is not considered confidential unless it meets the requirements of subsections 2 to 6;

2. Records requested confidential or causing detriment. Any record obtained or developed by the commissioner or the State Tax Assessor that:

A. A person, which may include a qualified business, to whom the record belongs or pertains has requested be designated confidential; or

B. The commissioner has determined contains information that gives the owner or a user of that information an opportunity to obtain business or competitive advantage over another person who does not have access to the information or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains;

3. Private records. Any record, including any financial statement or tax return, obtained or developed by the commissioner or the State Tax Assessor, the disclosure of which would constitute an invasion of personal privacy, as determined by the governmental entity in possession of that record or information;

4. Employment tax increment program records. Any record, including any financial statement or tax return, obtained or developed by the commissioner or the State Tax Assessor in connection with any monitoring or servicing activity by the commissioner or the State Tax Assessor that pertains to an employment tax increment program;

5. Creditworthiness records. Any record, including any financial statement or tax return obtained or developed by the commissioner or the State Tax Assessor, containing an assessment by a person not employed by the State of the creditworthiness or financial condition of any person or project; and

6. Confidential financial statements. Any financial statement, if the person to whom the statement belongs or pertains has requested that the record be designated confidential.

§6761. Audit process

This chapter may not be construed to limit the authority of the State Tax Assessor to conduct an audit of a qualified business. When it is determined by the State Tax Assessor upon audit that a qualified business has received a distribution larger than that to which it is entitled under this chapter, the overpayment must be applied against subsequent distributions, unless it is determined that the overpayment is the result of fraud on the part of the qualified business, in which case the State Tax Assessor may disqualify the business from receiving any future distributions. When there is no subsequent distribution, the qualified business to which overpayments were made is liable for the amount of the overpayments and may be assessed pursuant to provisions of Part 1.

See title page for effective date.

CHAPTER 670

S.P. 731 - L.D. 1835

An Act to Provide for Assisted Living Services

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 21-A MRSA §751, sub-§7, as amended by PL 1991, c. 466, §24, is further amended to read:

7. Residence in certain facilities. ~~Resident of~~ Residence in a licensed nursing home, as defined in Title 22, chapter 405, licensed boarding home, as defined in Title 22, chapter 1665, or certified congregate housing unit, as defined in Title 22, chapter ~~1457-A,~~ 1665. Residents of those facilities may cast absentee ballots only when the clerk is present;

Sec. A-2. 21-A MRSA §753, sub-§3-A, as amended by PL 1991, c. 862, §6, is further amended to read:

3-A. Alternate method of balloting by residents of licensed nursing homes, licensed boarding homes or certified congregate housing units. The municipal clerk shall designate one or more times during the 30-day period prior to an election during which the municipal clerk must be present in any licensed nursing home, as defined in Title 22, chapter 405; licensed boarding home, as defined in Title 22, chapter 1665; or certified congregate housing unit, as defined in Title 22, chapter ~~1457-A~~ 1665, for the purpose of absentee balloting by the residents of these homes or units. The clerk shall designate which areas in these facilities constitute the voting place, the voting booth and the guardrail enclosure. Sections 681 and 682 apply to voting in these facilities within the areas designated by the clerk.

Sec. A-3. 22 MRSA c. 1457-A, as amended, is repealed.

Sec. A-4. 22 MRSA c. 1665 is amended by repealing the chapter headnote and enacting the following in its place:

CHAPTER 1665

ASSISTED LIVING PROGRAMS

Sec. A-5. 22 MRSA §7901-A, as amended by PL 1993, c. 661, §7, is repealed.

Sec. A-6. 22 MRSA §§7901-B and 7901-C are enacted to read:

§7901-B. Assisted living programs and services authorized

Assisted living programs and services are authorized under this chapter subject to the following standards and in the following settings.

1. Standards. Assisted living programs further the independence of the resident and respect the privacy and personal choices of the resident, including the choice to continue to reside at home as the resident ages, except when that choice would pose a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others. Assisted living services provided to residents must be consumer oriented and meet professional standards of quality.

2. Settings. Assisted living services programs may be provided in the following settings:

A. Congregate housing operating under this chapter. A congregate housing program providing assisted living services may operate